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Robert Buckley, Jr; Art Rud; Ron Fahy; Robert
Nurisso; Frank Sullivan; U.A. Local 38 Pension
Trust Fund; U.A. Local 38 Health & Welfare Trust
Fund; U.A. Local 38 Apprentice & Journeyman
Training Trust Fund; U.A. Local 38 Scholarship
Trust Fund; U.A. Local 38 Vacation and Holiday
Trust Fund; U.A. Local 38 Convalescent Trust Fund
and Richard L. Milsner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELAINE L. CHAO, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

LAWRENCE J. MAZZOLA, et al.,
Defendants.

Case No. C 04 4949 PJH (EMC)

**UNSEALED DECLARATION OF ELAINE
WALLACE IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Hearing Date: March 7, 2007
Time: 9:00 a.m.
Courtroom: 3, 17th Floor
Judge: Hon. Phyllis J. Hamilton

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 Katherine S. Ritchey (State Bar No. 178409)
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 Lawrence J. Mazzola; Lawrence Mazzola, Jr;
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 Vohon J. Kazarian; Tom Irvine; Robert E. Buckley;
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 Nurisso; Frank Sullivan; U.A. Local 38 Pension
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 and Richard L. Milsner

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ELAINE L. CHAO, Secretary of Labor,
 United States Department of Labor,

 Plaintiff,

v.

LAWRENCE J. MAZZOLA, et al.,

 Defendants.

Case No. C 04 4949 PJH (EMC)

**DECLARATION OF ELAINE WALLACE
 IN SUPPORT OF DEFENDANTS'
 MOTION FOR SUMMARY JUDGMENT**

Hearing Date: March 7, 2007
 Time: 9:00 a.m.
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 Judge: Hon. Phyllis J. Hamilton

I, ELAINE WALLACE, declare as follows:

I am a member of the State Bar of California and am admitted to practice in this Court. I
 am one of the counsel of record for Defendants Lawrence J. Mazzola, Lawrence Mazzola, Jr.,
 William B. Fazande, Larry Lee, James R. Shugrue, Vohon J. Kazarian, Tom Irvine, Robert E.
 Buckley, Robert Buckley, Jr, Art Rud, Ron Fahy, Robert Nurisso, Frank Sullivan, U.A. Local 38

COPY
 RECEIVED

DEC 21 2006
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

1 Pension Trust Fund, U.A. Local 38 Health & Welfare Trust Fund, U.A. Local 38 Apprentice &
2 Journeyman Training Trust Fund, U.A. Local 38 Scholarship Trust Fund, U.A. Local 38 Vacation
3 and Holiday Trust Fund, U.A. Local 38 Convalescent Trust Fund, and Richard L. Milsner
4 (collectively, "Defendants") in the above captioned matter. I make this declaration in support of
5 Defendants' Motion for Summary Judgment. I make this declaration upon personal knowledge.

6 1. Attached hereto as Exhibit 1 is a true and correct copy of the Amended Complaint filed in
7 this action on February 15, 2005.

8 2. Attached hereto as Exhibit 2 is a true and correct copy of the Secretary of Labor's First
9 Amended Response to Defendant Lawrence J. Mazzola's First Set of Interrogatories, served in
10 this action on June 29, 2006.

11 3. Attached hereto as Exhibit 3 are true and correct copies of excerpts from Karl Spargur's
12 personal deposition on September 21, 2006 and his October 11, 2006 through October 13, 2006
13 depositions as one of the designees under Rule 30(b)(6) of the Federal Rules of Civil Procedure
14 for the Department of Labor (the "Department") in this action.

15 4. On August 24, 2006, Plaintiff and Defendants executed the First Set of Stipulations
16 between Plaintiff and Defendants attached hereto as Exhibit 4 (the "Authenticity Stipulations").
17 Pursuant to the First Set of Stipulations, the parties have agreed that the following documents
18 satisfy the authenticity requirements of Rule 901 of the Federal Rules of Evidence: (a) all
19 documents created by the Department of Labor (the "DOL" or "Department") and produced in
20 this litigation; (b) all documents that appear on the Court's docket in *Donovan v. Mazzola*, No. C-
21 79-134 SAW, 1981 U.S. Dist. LEXIS 17411 (N. D. Cal. Nov. 18, 1981) (*Mazzola I*); and (c) all
22 pleadings and discovery requests from *Mazzola I*.

23 5. Attached hereto as Exhibit 5 is a true and correct copy of the January 8, 2003 Report of
24 Investigation ("ROI") for the Department investigation that led to the current litigation.

25 6. Attached hereto as Exhibit 6 are true and correct copies of excerpts from the September 2,
26 2003 administrative deposition and October 18, 2006 litigation deposition of Frank Sullivan in
27 this action.

28

1 7. Attached hereto as Exhibit 7 is a true and correct copy of an excerpt from the March 22,
2 1980 deposition of Joseph P. DeLuca in *Mazzola I*.

3 8. Attached hereto as Exhibit 8 is a true and correct copy of a document marked as
4 Exhibit 145 in the February 5, 1980 deposition of Lester Singer in *Mazzola I*. This document
5 appears on the Court's docket for *Mazzola I* and thus is within the parties' Authenticity
6 Stipulations described in paragraph 4 above. A copy of the Court's docket is attached hereto as
7 Exhibit 9.

8 9. Attached hereto as Exhibit 10 is a true and correct copy of a document marked as
9 Exhibit 148 in the February 5, 1980 deposition of Lester Singer in *Mazzola I*. This document
10 appears on the Court's docket for *Mazzola I* and thus is within the parties' Authenticity
11 Stipulations described in paragraph 4 above.

12 10. Attached hereto as Exhibit 11 is a true and correct copy of a February 22, 1989 Report of
13 Interview. This document was created by the Department and produced by it in this litigation and
14 thus is within the parties' Authenticity Stipulations described in paragraph 4 above.

15 11. Attached hereto as Exhibit 12 is a true and correct copy of an October 31, 1989
16 Convalescent Fund ROI. This document was created by the Department and produced by it in
17 this litigation and thus is within the parties' Authenticity Stipulations described in paragraph 4
18 above.

19 12. Attached hereto as Exhibit 13 is a true and correct copy of a May 31, 1989 Health &
20 Welfare ROI. This document was created by the Department and produced by it in this litigation
21 and thus is within the parties' Authenticity Stipulations described in paragraph 4 above.

22 13. Attached hereto as Exhibit 14 is a true and correct copy of the Department's Pretrial Brief
23 in *Mazzola I*, filed on October 8, 1980. This document appears on the court docket for the
24 *Mazzola I* proceeding and thus is within the parties' Authenticity Stipulations described in
25 paragraph 4 above.

26 14. Attached hereto as Exhibit 15 is a true and correct copy of an August 6, 1976 ROI and
27 attached May 10, 1976 memorandum. These documents were created by the Department and
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1 produced by it in this litigation and thus are within the parties' Authenticity Stipulations
2 described in paragraph 4 above.

3 15. Attached hereto as Exhibit 16 is a true and correct copy of the parties' Joint Pretrial
4 Statement in *Mazzola I*, filed on July 20, 1980. This document appears on the court docket for
5 the *Mazzola I* proceeding and thus is within the parties' Authenticity Stipulations described in
6 paragraph 4 above.

7 16. Attached hereto as Exhibit 17 is a true and correct copy of the August 22, 1983 ROI.
8 This document was created by the Department and produced by it in this litigation and thus is
9 within the parties' Authenticity Stipulations described in paragraph 4 above.

10 17. Attached hereto as Exhibit 18 are a series of charts prepared at my direction containing
11 excerpts from the financial statements and auditor opinion letters attached to the Form 5500s filed
12 on behalf of the Convalescent Fund and Health & Welfare Fund from 1975 through 2004. In
13 response to a Request for Admission served by the Department, Defendants have admitted that
14 the Form 5500s and attached financial statements and auditor letters satisfy the authenticity
15 requirements of Rule 901 of the Federal Rules of Evidence.

16 18. Attached hereto as Exhibit 19 is a true and correct copy of a March 15, 1990
17 memorandum from Virginia C. Smith to Leonard Garofolo. This document was created by the
18 Department and produced by it in this litigation and thus is within the parties' Authenticity
19 Stipulations described in paragraph 4 above.

20 19. Attached hereto as Exhibit 20 is a true and correct copy of an April 1, 1992 memorandum
21 from Jean Ackerman to Leonard Garofolo. This document was created by the Department and
22 produced by it in this litigation and thus is within the parties' Authenticity Stipulations described
23 in paragraph 4 above.

24 20. Attached hereto as Exhibit 21 is a true and correct copy of an excerpt from the
25 October 23, 1980 trial testimony of Robert E. Buckley in *Mazzola I*.

26 21. Attached hereto as Exhibit 22 is a true and correct copy of a May 13, 1977 ROI for the
27 Health & Welfare, Pension, and Convalescent Funds. This document was created by the
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1 Department and produced by it in this litigation and thus is within the parties' Authenticity
2 Stipulations described in paragraph 4 above.

3 22. Attached hereto as Exhibit 23 is a true and correct copy of a May 31, 1989 memorandum
4 from Leonard Garofolo to Charles Lerner and Virginia Smith. This document was created by the
5 Department and produced by it in this litigation and thus is within the parties' Authenticity
6 Stipulations described in paragraph 4 above.

7 23. Attached hereto as Exhibit 24 is a true and correct copy of a January 31, 2000
8 memorandum from Joe Mendoza and Cherie Herman to Corey Mayo. This document was
9 created by the Department and produced by it in this litigation and thus is within the parties'
10 Authenticity Stipulations described in paragraph 4 above.

11 24. Attached hereto as Exhibit 25 is a true and correct copy of the Declaration of Barbara
12 Allen Levy, paralegal specialist in the Office of Chief Counsel for the Internal Revenue Service,
13 dated December 1, 2006.

14 25. Attached hereto as Exhibit 26 is a true and correct copy of a set of documents marked as
15 Exhibit 45 in the September 21, 2006 personal deposition of Karl Spargur in this action. For the
16 Court's convenience, Defendants' counsel has added page numbers to this Exhibit for ease of
17 reference. The documents that comprise deposition Exhibit 45 were identified in the
18 September 21, 2006 deposition of Karl Spargur as documents relating to the Internal Revenue
19 Service's November 1999 referral to the Department. As set forth above, true and correct copies
20 of excerpts from that deposition are attached hereto as Exhibit C.

21 26. Attached hereto as Exhibit 27 is a true and correct copy of a set of Case Review memos
22 marked as Exhibit 164 in the October 12, 2006 deposition of Karl Spargur, as one of the
23 designees under Rule 30(b)(6) of the Federal Rules of Civil Procedure for the Department.
24 These documents were created by the Department and produced by it in this litigation and thus is
25 within the parties' Authenticity Stipulations described in paragraph 4 above.

26 27. Attached hereto as Exhibit 28 are true and correct copies of excerpts from the
27 September 22, 2006 deposition of Julianne Majette in this action.
28

- 1 28. Attached hereto as Exhibit 29 is a true and correct copy of the Department of Labor's
2 Supplemental Response to Defendants' first Request for Admission, served on October 4, 2006.
- 3 29. Attached hereto as Exhibit 30 is a true and correct copy of the "Agreement to Toll the
4 Running of the Statute of Limitations" between the Secretary of Labor and Frank Sullivan, which
5 was fully executed on October 21, 2002.
- 6 30. Attached hereto as Exhibit 31 is a true and correct copy of an excerpt from the August 23,
7 2006 deposition of Corey Mayo in this action.
- 8 31. Attached hereto as Exhibit 32 are true and correct copies of excerpts from the
9 September 3, 2003 administrative deposition and November 13, 2006 litigation deposition of
10 Lawrence J. Mazzola, Sr. in this action.
- 11 32. Attached hereto as Exhibit 33 is a true and correct copy of Chapter 12 of the Pension and
12 Welfare Benefits Administration Enforcement Manual. This document was created by the
13 Department and produced by it in this litigation and thus is within the parties' Authenticity
14 Stipulations.
- 15 33. Attached hereto as Exhibit 34 is a true and correct copy of an excerpt from the February 7,
16 1980 deposition of Henry J. Riboni in *Mazzola I*.
- 17 34. Attached hereto as Exhibit 35 is a true and correct copy of a February 15, 1990
18 memorandum from Leonard Garofolo to Virginia Smith and David Stander. This document was
19 created by the Department and produced by it in this litigation and thus is within the parties'
20 Authenticity Stipulations described in paragraph 4 above.
- 21 35. Attached hereto as Exhibit 36 is a true and correct copy of an excerpt from the transcript
22 of the proceedings before the *Mazzola I* Court on October 21, 1980.
- 23 36. Attached hereto as Exhibit 37 is a true and correct copy of the Judgment entered by the
24 *Mazzola I* Court on July 6, 1982.
- 25 37. Attached hereto as Exhibit 38 is a true and correct copy of the Consent Order entered by
26 the *Mazzola I* Court on July 6, 1982.
- 27 38. Attached hereto as Exhibit 39 is a true and correct copy of the Department's response to
28 Defendants' Request for Admission No. 23 set forth in the Secretary of Labor's Second

1 Supplemental Response to Defendant Lawrence J. Mazola Jr.'s Second Set of Interrogatories to
2 Plaintiff, served on October 26, 2006.

3 39. I have reviewed the report provided by Thomas E. Lumsden pursuant to Rule 26 of the
4 Federal Rules of Civil Procedure. Mr. Lumsden's work objectives are described on page 2 of the
5 report as follows: "(1) a forensic accounting analysis of the dollar amounts and dates of assets
6 transferred between and among the UA Local 38 Trust Funds (footnote below the specific funds
7 defined as this) from January 1, 1995 to December 31, 2005; (2) an accounting of the dollar
8 amounts and dates of assets transferred from the UA Local 38 Trust Funds to the Konocti Harbor
9 Reosrt & Spa ("KHR", "Konocti Harbor Resort" or "Konocti").

10 I declare under penalty of perjury under the laws of the United States and the State of
11 California that the foregoing is true and correct.

12 Executed on this 21st day of December, 2006 at San Francisco, California.

13 
14 Elaine Wallace

PROOF OF SERVICE BY MAIL

I, Virginia M. Aldajani, declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 California Street, 26th Floor, San Francisco, California 94104. On December 21, 2006, I served a copy of the within document(s):

DECLARATION OF ELAINE WALLACE IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a agent for delivery.
- ☐ by causing the envelope to be personally delivered by Quake Attorney and Messenger Service, the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by transmitting via electronic mail the document(s) listed above to the e-mail addresses set forth below:

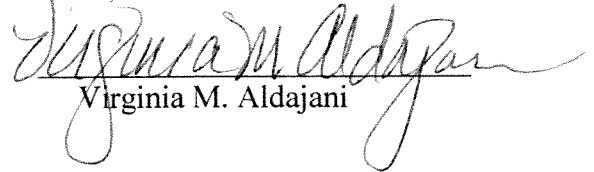
Wayne Berry
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 United States Department of Labor
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 San Francisco, CA 94111-5994

Barbara Matthews
 Office of the Solicitor
 United States Department of Labor
 71 Stevenson Street, Suite 1110
 San Francisco, CA 94105

1 I declare that I am employed in the office of a member of the bar of this court at whose
2 direction the service was made.

3 Executed on December 21, 2006, at San Francisco, California.

4 
5 Virginia M. Aldajani

6 SFI-558865v1

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